

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
<b>KRISJENN RANCH, LLC,</b>	§	
<i>Debtor</i>	§	<b>Case No. 20-50805</b>
	§	

<b>KRISJENN RANCH, LLC and</b>	§	
<b>KRISJENN RANCH, LLC-SERIES</b>	§	
<b>UVALDE RANCH, and KRISJENN</b>	§	
<b>RANCH, LLC-SERIES PIPELINE</b>	§	
<b>ROW as successors in interest to</b>	§	
<b>BLACKDUCK PROPERTIES, LLC,</b>	§	
<i>Plaintiffs</i>	§	
	§	
<b>v.</b>	§	
	§	
<b>DMA PROPERTIES, INC., and</b>	§	
<b>LONGBRANCH ENERGY, LP,</b>	§	
<i>Defendants</i>	§	
	§	<b>Adversary No. 20-05027</b>

<b>DMA PROPERTIES, INC,</b>	§	
<b><i>Cross-Plaintiff/Third Party Plaintiff</i></b>	§	
	§	
<b>v.</b>	§	
	§	
<b>KRISJENN RANCH, LLC,</b>	§	
<b>KRISJENN RANCH, LLC-SERIES</b>	§	
<b>UVALDE RANCH, and KRISJENN</b>	§	
<b>RANCH, LLC-SERIES PIPELINE ROW,</b>	§	<b>Adversary No. 20-05027</b>
<b>BLACK DUCK PROPERTIES, LLC,</b>	§	
<b>LARRY WRIGHT, and JOHN TERRILL,</b>	§	
<b><i>Cross-Defendants/Third-Party</i></b>	§	
<b><i>Defendants</i></b>	§	

**KRISJENN RANCH, LLC, KRISJENN RANCH, LLC-SERIES UVALDE RANCH, AND  
KRISJENN RANCH, LLC-SERIES PIPELINE ROW, AS SUCCESSORS IN INTEREST TO  
BLACK DUCK PROPERTIES, LLC’S MOTION FOR LEAVE TO FILE THEIR  
THIRD AMENDED COMPLAINT**

TO THE HONORABLE CHIEF BANKRUPTCY JUDGE RONALD B. KING:

COME NOW Debtors, Plaintiffs, and Counter-Defendants KrisJenn Ranch, LLC, KrisJenn Ranch, LLC-Series Uvalde Ranch, and KrisJenn Ranch, LLC-Series Pipeline Row, as successors in interest to Black Duck Properties, LLC (collectively the “Debtors”), and file this Motion for Leave to File Their Third Amended Complaint (the “Motion”).

### **BACKGROUND**

1. Debtors filed their Original Complaint on May 1, 2020. (Dkt. No. 1).
2. Debtors filed their First Amended Complaint on May 5, 2020. (Dkt. No. 3).
3. DMA Properties, Inc. filed its Counterclaim and Third-Party Complaint on June 1, 2020. (Dkt. No. 5 & 6).
4. The Debtors answered DMA Properties, Inc.’s Counterclaim and Third-Party claim on June 29, 2020. (Dkt. No. 20).
5. Frank Daniel Moore filed his Counterclaim and Third-Party Complaint on June 12, 2020. (Dkt. No. 14).
6. The Debtors answered Frank Daniel Moore’s Counterclaim and Third-Party Complaints on July 6, 2020. (Dkt. No. 21).
7. The initial scheduling order set September 14, 2020 as the pleadings deadline and set trial for December 7, 2020. (Dkt. No. 24).
8. Subsequently, the trial was reset for January 11, 2021, the pleadings deadline was subsequently extended to October 14, 2020, (Dkt. No. 69) and discovery was extended until December 11, 2020.
9. On November 3, 2020 Debtors filed their Second Amended complaint, prior to completing discovery. (Dkt. No. 141).
10. On November 30, 2020 DMA and Moore filed their Amended Counterclaims and Third-Party Claims. (Dkt. Nos. 172, 173).

11. Due to discovery issues, including voluminous objections and failure to provide verified answer to interrogatories, Debtors finally deposed Moore on December 4, 2020. Shortly thereafter, Debtors deposed Borders on December 16, 2020.

12. Following the depositions of Moore and Longbranch LP, Debtors were provided with supplemental discovery, which included no less than 130 pages of text messages between Moore and Borders, the principal of Longbranch. These text messages contained relevant discoverable information that shows Moore's breach of fiduciary duty to Black Duck Properties, LLC, the entity that owned and sold the ROW at the center of this matter. These text messages had been properly requested from Moore well in advance of trial but were never produced. Had Debtors had this information prior to the expiration of the pleadings deadline, Debtors would have amended their pleadings to include the causes of action in the attached pleading. *See Exhibit A*. Debtors now seek leave to amend their Complaint. A true and correct copy of their proposed Second Amended Complaint is attached hereto as **Exhibit A**.

13. Notwithstanding the fast approaching trial date, Debtors will be prepared to continue with trial on the scheduled date and do not seek additional discovery, beyond what has been ordered by the Court. Allowing Debtors to amend their pleadings after the expiration of the pleadings deadline in this case is in the interest of justice, as allowing DMA, Moore and Longbranch to serve their supplemental documents while shielding them from the proposed causes of action is tantamount to trial by ambush and is contrary to the interest justice.

### **ARGUMENTS AND AUTHORITY**

14. Rule 15 of the Federal Rules of Civil Procedure provides in relevant part that "... a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." FED. R. CIV. P. 15(a).

15. The United States Supreme Court has declared that Rule 15(a)'s directive that leave to amend "shall be freely given when justice so requires" is a "mandate . . . to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Foman court further declared that:

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, [or] undue prejudice to the opposing party by virtue of allowance of the amendment . . .—the leave sought should, as the rules require, be “freely given.”

*Id.* (quoting Rule 15(a)).

16. No prejudice would result from granting the Motion. Debtors do not intend on adding additional parties and believe that the addition of their claims would not act as an impediment on the current trial setting. Rather, failing to grant leave would highly prejudice Debtors and reward Moore and DMA for their discovery abuses. Accordingly, the Debtors respectfully request the Court grant leave to amend their Complaint.

WHEREFORE PREMISES CONSIDERED KrisJenn Ranch, LLC, KrisJenn Ranch, LLC-Series Uvalde Ranch, and KrisJenn Ranch, LLC-Series Pipeline Row, as successors in interest to Black Duck Properties, LLC respectfully request that the Court grant its Motion for Leave to File their Third Amended Complaint and for any other relief to which it is entitled.

Dated: December 30, 2020

Respectfully submitted,

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ATTORNEY FOR DEBTORS

**CERTIFICATE OF CONFERENCE**

I hereby certify that on December 22, 2020 I conferred with counsel for Frank Daniel Moore, DMA Properties, Inc. and Longbranch Energy, LP about the relief requested in this motion on the record. Upon such conference, counsel has indicated that they are opposed to the relief requested in the above motion.

/s/ John Muller  
C. John Muller IV

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record by way of e-service through the CM/ECF system by notice of electronic filing or via email on the 30th day of December 2020:

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